

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

In the matter of:)	
)	Order R4-2013-0017 (Proposed)
The City of Los Angeles)	
Bureau of Sanitation)	SETTLEMENT AGREEMENT AND
)	STIPULATION FOR ENTRY OF
)	ADMINISTRATIVE CIVIL LIABILITY ORDER;
)	ORDER (PROPOSED)
)	

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board), on behalf of the Los Angeles Water Board Prosecution Staff (Prosecution Staff) and the City of Los Angeles Bureau of Sanitation. (collectively "Parties") and is presented to the Los Angeles Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60 (Stipulated Order).

Section II: RECITALS

1. The City of Los Angeles, Bureau of Sanitation (Discharger) owns and operates a sewage collection system, which includes a trap maintenance manhole near 6161 West Centinela Avenue, Los Angeles, California. A City of Culver City force main and a City of Los Angeles 12-inch local sewer both discharge into the trap maintenance manhole.
2. On November 22, 2006, the Discharger enrolled in State Water Resources Control Board (State Water Board) Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems adopted by the State Board on May 2, 2006. The City is required to operate and maintain its sewage collection system in compliance with the requirements contained in Order No. 2006-0003-DWQ.
3. Prohibition C.1 of Order No. 2006-0003-DWQ states, "[a]ny [sanitary sewer overflow (SSO)] that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited."
4. Section 301 of the Clean Water Act (33 U.S.C. §1311) and Water Code Section 13376 prohibit the discharge of pollutants to surface water except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. State Water Board Order No. 2006-0003-DWQ is not an NPDES permit.
5. The Prosecution Staff alleges that, on September 28-29, 2010, the Discharger violated Prohibition C.1 of Order No. 2006-0003-DWQ, Section 301 of the Clean Water Act, and Water Code section 13376 by discharging approximately 42,000 gallons of untreated sewage from the trap maintenance manhole near 6161 West Centinela Avenue to Centinela Creek. The Prosecution Staff's allegations are described in Exhibit A, attached hereto and incorporated herein by this reference.

Settlement Agreement and Stipulated Administrative Civil Liability Order
City of Los Angeles, Bureau of Sanitation

6. The Parties have engaged in settlement negotiations and agree to fully settle the alleged violations set forth in Exhibit A without administrative or civil litigation and by presenting this Stipulation to the Los Angeles Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The amount of administrative civil liability imposed pursuant to this Stipulated Order is less than the amount calculated by the Los Angeles Water Board Prosecution Staff using the State Water Board's Water Quality Enforcement Policy, as shown in Exhibit B. The reduction in liability is justified considering the risks associated with proceeding to hearing and is consistent with the range of settlement considerations which may result in a reduction in the calculated liability specified in the State Water Board's Water Quality Enforcement Policy. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged in Exhibit A, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

7. **Jurisdiction:** The Parties agree that the Los Angeles Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

8. **Administrative Civil Liability:** The Discharger agrees to the imposition of administrative civil liability in the amount of \$45,000. Of that amount, the Discharger agrees to pay \$22,500 in accordance with Paragraph 9, below. The remaining \$22,500 in liability will be suspended pending completion of a Supplemental Environmental Project (SEP) as set forth in Paragraph 11, below. The cost of the SEP will be referred to as the SEP Amount.

9. The Discharger shall pay \$22,500 in administrative civil liability by check made payable to the "State Water Pollution Cleanup and Abatement Account," no later than 30 days following the Los Angeles Water Board, or its delegee, executing this Order. The check shall reference the Order number indicated on page one of this Stipulation. The original signed check shall be sent to:

Mr. Chris Lopez
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, California, 90013
(213) 576-6806
chlopez@waterboards.ca.gov

10. In addition to payment of the administrative civil liability, the Discharger shall pay \$3,000 in Los Angeles Water Board staff costs that are expected to be incurred for overseeing the implementation of the SEP (Oversight Costs). Payment of Oversight Costs shall be made within 30 days of issuance of the Stipulated Order. Payment shall be by check made payable to the "State Water Pollution Cleanup and Abatement Account," and sent to the address specified in Paragraph 9 above. The check shall reference "SEP Oversight Costs" as well as the Order number indicated on page one of this Stipulation.

11. The Discharger agrees to discharge its SEP obligations as described in Paragraphs A-J below:

A. DESCRIPTION OF THE SEP

The Discharger will contribute the SEP Amount to Heal the Bay (Implementing Party), within 30 days of issuance of this Stipulated Order, to assist with the Beach Water Quality BMP Efficacy Study (BMP Study). The SEP will analyze water quality data at 15 monitoring locations in Los Angeles County for bacteria and other organisms that are harmful to beachgoers. The goal of the SEP is to evaluate the effectiveness of stormwater Best Management Practices (BMPs) used in the City of Los Angeles.

The goal of determining BMP efficacy will be accomplished by analyzing beach water quality data three years prior to construction of the BMPs, and analyzing the beach water quality post-BMP project completion through March 31, 2012. The study will evaluate which BMPs are most effective at reducing bacteria levels and meeting Total Maximum Daily Load (TMDL) waste load allocations.

Water quality data will be analyzed and interpreted from two sources:

- 1) Heal the Bay's beach water quality database – bacteriological data obtained from health departments and Publicly Owned Treatment Facilities (POTW's), and
- 2) Water quality monitoring data included in the project's Clean Beach Initiative final report that has been submitted to the State Water Board.

The monitoring data will be sorted into three separate time periods: the AB411 time period (dry weather monitoring data collected April 1 – October 31), winter dry weather (dry weather monitoring data collected November 1 – March 31), and year-round wet weather (wet weather data is defined as ≥ 0.1 inches of rain and includes the following 72 hours post-rainfall). In order to accurately determine BMP effectiveness, water quality data will undergo statistical analyses for each time period to determine if there is a significant reduction in bacteria levels pre- and post-BMP construction.

B. REPRESENTATION OF THE IMPLEMENTING PARTY

As a material consideration for the Los Angeles Water Board's acceptance of this Stipulated Order, the Implementing Party has represented that it will: (1) utilize the funds provided to it by the Discharger to implement the SEP in accordance with the Schedule for Performance set forth in Exhibit D; (2) provide certified, written reports to the Los Angeles Water Board and the Discharger consistent with the terms of this Stipulated Order detailing the implementation of the SEP; and (3) comply with all other applicable requirements of the Implementing Party as provided herein.

C. PUBLICITY

Whenever the Discharger or its agents or subcontractors or the Implementing Party publicize one or more elements of the SEP, they shall state in a **prominent manner**

that the Project is being undertaken as part of the settlement of an enforcement action by the Los Angeles Water Board against the Discharger.

D. SUBMITTAL OF PROGRESS REPORTS

The Implementing Party shall provide quarterly reports of progress to the Designated Los Angeles Water Board Representative and the Discharger according to the schedule below. The quarterly reports shall include a list of all activities on the SEP since its adoption, all SEP activities during the quarter, an accounting of funds expended, and the proposed work for the following quarter. The first report is due on the 1st day of the fifth month after the project commences.

<u>Reporting Period</u>	<u>Report Due Date</u>
Months 1-3	First day of month 5
Months 4-6	First day of month 8
Months 7-9	First day of month 11
Months 10-12	First day of month 14

E. SITE INSPECTIONS

The Implementing Party shall permit Los Angeles Water Board staff and the Discharger to inspect during normal business hours any location where the SEP is being implemented as well as review any documents associated with implementation of the SEP at any time without notice.

F. AUDITS AND CERTIFICATION OF ENVIRONMENTAL PROJECT

1. Certification of Completion

Within 30 days of completion of the SEP, the Discharger shall submit a certified statement of completion of the SEP (Certificate of Completion). A responsible corporate official representing the Discharger shall submit the Certification of Completion under penalty of perjury to the Designated Regional Board Representative:

Mr. Chris Lopez
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
(213) 576-6806
chlopez@waterboards.ca.gov

The Certification of Completion shall include the following:

i. Certification of Expenditures

Certification documenting all expenditures by the Discharger and/or the Implementing Party. For the Discharger, the expenditures may be limited to documentation of payment of the SEP Amount to the Implementing Party. For the Implementing Party, the expenditures may include external payments to outside vendors or contractors

implementing the SEP. If applicable, the expenditures may include the costs of internal Environmental Management resources and internal Business Unit resources, provided that such expenditures are directly related to development and implementation of the SEP. In making such certification, the official may rely upon normal company and project tracking systems that captures employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The Discharger/Implementing Party shall provide any additional information requested by the Los Angeles Water Board staff which is reasonably necessary to verify SEP expenditures. The certification need not address any costs incurred by the Los Angeles Water Board for oversight.

ii. Certification of Performance of Work

Certification that the SEP has been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other material reasonably necessary for the Los Angeles Water Board to evaluate the completion of the SEP and the costs incurred by the Discharger/Implementing Party.

iii. Certification that Work Performed on SEP Met or Exceeded Requirements of CEQA and other Environmental Laws [where applicable]

Certification that the SEP meets or exceeds the requirements of CEQA and or other environmental laws. Unless the Implementing Party is exempted from compliance with CEQA, the Discharger and/or the Implementing Party shall, before the SEP implementation date, consult with other interested State Agencies regarding potential impacts of the SEP. Other interested State Agencies include, but are not limited to, the California Department of Fish and Game. To ensure compliance with CEQA where necessary, the Discharger and/or the Implementing Party shall provide the Los Angeles Water Board with the following documents:

- a. Categorical or statutory exemptions;
- b. Negative Declaration if there are no "significant" impacts;
- c. Mitigated Negative Declaration if there are potential "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potential significant impacts;
- d. Environmental Impact Report (EIR) if there are "significant" impacts.

2. Third Party Audit

If the Designated Regional Board Representative obtains information that causes the representative to reasonably believe that the Discharger (or

Implementing Party) has not expended money in the amounts claimed by the Discharger (or Implementing Party), or has not adequately completed any of the work in the SEP, the Designated Regional Board Representative may require, and the Discharger shall submit, at its sole cost, a report prepared by an independent third party(ies)'s, stating that in its professional opinion, the Discharger (and the Implementing Party) has expended money in the amounts claimed by the Discharger. In the event of such an audit, the Discharger (and the Implementing Party) agrees that they will provide the third party auditor with access to all documents which the auditor requests. Such information shall be provided to the Designated Regional Board Representative within three months of the completion of the Discharger's SEP obligations. The audit need not address any costs incurred by the Los Angeles Water Board for oversight.

G. LOS ANGELES WATER BOARD ACCEPTANCE OF COMPLETED SEP

Upon the Discharger's satisfaction of its obligations under this Stipulated Order, the completion of the SEP and any audit, the Designated Regional Board Representative, with notice to the regional Enforcement Coordinator, shall request that the Los Angeles Water Board, or the Los Angeles Water Board's Delegee, issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligation of the Discharger and/or the Implementing Party under this Stipulated Order.

H. FAILURE TO EXPEND ALL SUSPENDED ADMINISTRATIVE CIVIL LIABILITY FUNDS ON THE APPROVED SEP

In the event that the Discharger has contributed the SEP Amount to the Implementing Party pursuant to 11.A and the Implementing Party is not able to demonstrate to the reasonable satisfaction of the Designated Regional Board Representative that the entire SEP Amount has been spent for the completed SEP, the Discharger, and/or the Implementing Party on behalf of the Discharger, shall pay the difference between the SEP Amount and the amount the Discharger or the Implementing Party can demonstrate was actually spent on the SEP, as an administrative civil liability.

I. FAILURE TO COMPLETE THE SEP

If the SEP is not fully implemented within the SEP Completion Period required by this Stipulated Order or there has been a material failure to satisfy a Milestone Requirement, the Designated Regional Board Representative shall issue a Notice of Violation.

As a consequence, the Discharger shall be liable to pay the entire Suspended Liability or, some portion thereof. If the Discharger has contributed the entire SEP Amount to the Implementing Party pursuant to 11.A, then the Implementing Party may be held jointly and severally liable along with the Discharger to pay all or a portion of the Suspended Liability. Alternatively, the Implementing Party may be compelled to complete the SEP. The Prosecution Staff may act as follows:

1. The Prosecution elects for the payment of the Suspended Liability

The Discharger/Implementing Party might not be entitled to any credit, offset, or reimbursement from the Los Angeles Water Board for expenditures made on the SEP prior to the date of the "Notice of Violation" by the Los Angeles Water Board. The amount of the Suspended Liability owed shall be determined via a "Motion for Payment of Suspended Liability" before the Los Angeles Water Board. In the event that the Discharger/Implementing Party is jointly and severally liable for payment of Suspended Liability, the Los Angeles Water Board will not include that portion of the SEP amount found by the Los Angeles Water Board to have been expended in a timely manner and in compliance with the attached SEP Workplan (Exhibit "D") in the amount of the Suspended Liability owed. Upon a determination by the Los Angeles Water Board of the amount of the Suspended Liability assessed, the amount owed shall be paid to the State Water Pollution Cleanup and Abatement Account within thirty (30) days after the service of the Los Angeles Water Board's determination. In addition, the Discharger and/or Implementing Party in the event it is liable for Suspended Liability shall be liable of the Los Angeles Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy the Discharger's obligation to implement the SEP.

2. Certification of Performance to Work

The Prosecution Staff shall file a Motion to Enforce the SEP before the Los Angeles Water Board against the Discharger and/or the Implementing Party. Upon the identification by the Los Angeles Water Board of the remaining work of the SEP to be performed, the Discharger agrees that the Los Angeles Water Board may order the Discharger and/or Implementing Party to perform that work. In addition, the Implementing Party shall be liable for the Los Angeles Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees.

3. Claims between the Discharger and the Implementing Party

Any claims for reimbursement, costs (other than the payment by the Discharger of the SEP Amount pursuant to Paragraph 11.A above), or disputed between the Discharger and the Implementing Party are outside the scope of this Stipulated Order and should be handled as between the Discharger and the Implementing Party although the obligation of the Discharger and the Implementing Party as set forth in this Stipulation may be considered in any such disagreement.

J. LOS ANGELES WATER BOARD IS NOT LIABLE

Neither the Los Angeles Water Board members nor the Los Angeles Water Board staff, attorneys, or representatives shall be liable for any injury or damage to person or property resulting from acts or omissions by the Discharger (or the Implementing Party where applicable), its directors, officers, employees, agents, representatives or

Settlement Agreement and Stipulated Administrative Civil Liability Order
City of Los Angeles, Bureau of Sanitation

contractors in carrying out activities pursuant to this Stipulation, nor shall the Los Angeles Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation.

The Discharger and the Implementing Party covenant not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the ACL, this Stipulation or the SEP. This provision does not preclude the Discharger and/or the Implementing Party from opposing a Notice of Violation or Motion brought under Paragraph 11.I.

12. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in Exhibit A may subject it to further enforcement, including additional administrative civil liability.

13. **Party Contacts for Communications related to this Stipulation and Order:**

For the Los Angeles Water Board:

Hugh Marley, Chief
Compliance and Enforcement Section
Regional Water Quality Control Board,
Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 620-6375
hmarley@waterboards.ca.gov

For the Discharger:

Adel Hagekhalil, Assistant Director
1149 South Broadway, 9th Floor
Los Angeles, California 90015
(213) 485-2210
adel.hagekhalil@lacity.org

14. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

15. **Matters Covered by this Stipulation:** Upon adoption by the Los Angeles Water Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in Exhibit A or which could have been asserted based on the specific facts alleged in Exhibit A against the Discharger. The provisions of this Paragraph are expressly conditioned on the Discharger's full payment of administrative civil liability by the deadline specified in Paragraph 9 herein.

16. **Public Notice:** The Discharger and the Los Angeles Water Board Prosecution Staff understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Los Angeles Water Board, or its delegee. In the event objections are raised during the public review and comment period, the Los Angeles Water Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.

17. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Los Angeles Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

18. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.

19. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Los Angeles Water Board or its delegee.

20. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Los Angeles Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Los Angeles Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- A. Objections related to prejudice or bias of any of the Los Angeles Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Los Angeles Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in Exhibit A in this matter; or
- B. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

21. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Los Angeles Water Board prior to the adoption of the Order.

22. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Los Angeles Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

23. **The Discharger's Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

Settlement Agreement and Stipulated Administrative Civil Liability Order
City of Los Angeles, Bureau of Sanitation

24. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

25. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

26. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Los Angeles Water Board or its delegee, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

California Regional Water Quality Control Board,
Los Angeles Region Prosecution Team

Date: 10-8-2013

By: Paula Rasmussen

Paula Rasmussen
Assistant Executive Officer

City of Los Angeles, Bureau of Sanitation

Date: 9-27-2013

By: Edward Jordan

Edward Jordan
Assistant City Attorney

HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS, THE LOS ANGELES WATER BOARD, OR ITS DELEGEE, FINDS THAT:

27. The Los Angeles Water Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 26 above, by this reference, as if set forth fully herein.

28. In accepting this Stipulation, the Los Angeles Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13327 and section 13385, subdivision (e). The Los Angeles Water Board's consideration of these factors is based upon information obtained by the Prosecution Staff in investigating the allegations in Exhibit A, or otherwise provided to the Los Angeles Water Board. This settlement recovers the costs incurred by the Prosecution Staff in investigating and pursuing enforcement of the allegations set forth in Exhibit A as "other matters as justice may require".

29. This is an action to enforce the laws and regulations administered by the Los Angeles Water Board. The Los Angeles Water Board finds that issuance of this Order is exempt from the

Settlement Agreement and Stipulated Administrative Civil Liability Order
City of Los Angeles, Bureau of Sanitation

provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

30. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Los Angeles Region.

Samuel Unger, P.E.
Executive Officer

Date: _____

EXHIBIT A

LOS ANGELES WATER BOARD PROSECUTION STAFF'S ALLEGATIONS

1. The City of Los Angeles, Bureau of Sanitation (Discharger) owns and operates a sewage collection system, which includes a trap maintenance manhole near 6161 West Centinela Avenue, Los Angeles, California. A City of Culver City force main and a City of Los Angeles 12-inch local sewer both discharge into the trap maintenance manhole.
2. On November 22, 2006, the Discharger enrolled in State Water Resources Control Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems adopted by the State Board on May 2, 2006. The City is required to operate and maintain its sewage collection system in compliance with the requirements contained in Order No. 2006-0003-DWQ.
3. Prohibition C.1 of Order No. 2006-0003-DWQ states, "[a]ny [sanitary sewer overflow (SSO)] that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited."
4. Section 301 of the Clean Water Act (33 U.S.C. §1311) and Water Code section 13376 prohibit the discharge of pollutants to surface water except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. State Water Board Order No. 2006-0003-DWQ is not an NPDES permit.
5. On September 29, 2010, the Los Angeles Water Board received a Hazardous Materials Spill Report from the California Emergency Management Agency (Cal EMA) (Hazardous Materials Spill Report – Control #10-5872). The report gave notice of an ongoing overflow from a maintenance manhole due to an unknown blockage causing the release of sewage, which flowed into Ballona Creek and eventually to the Pacific Ocean, waters of the United States.
6. On September 30, 2010, the Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) issued Cleanup and Abatement Order No. R4-2010-0176 to the Discharger pursuant to Water Code section 13304 for the unpermitted discharge of raw sewage at 6161 West Centinela Avenue, Los Angeles, California. Order No. R4-2010-0176 directed the Discharger to take certain actions to assess, monitor, report, and cleanup and abate the effects of raw sewage discharged from the maintenance manhole located at 6161 West Centinela Avenue, Los Angeles, California.
7. On October 28, 2010, the Discharger responded to Cleanup and Abatement Order No. R4-2010-0176 and provided the following information:
 - a. Based on reports from the public, the SSO was estimated to have begun on Tuesday, September 28, 2010, at approximately 8:00 a.m. Raw sewage flowed down an undeveloped hillside into a storm drain where it flowed through a closed drainage system before reaching the open Centinela Creek Channel, which flows into Ballona Creek and ultimately the Pacific Ocean.
 - b. On Wednesday, September 29, 2010 at 12:38 p.m., the Bureau of Sanitation's Wastewater Collection Systems Division (WCSD) received report of a sewer overflow at 6161 West Centinela Avenue, Los Angeles, California.

Exhibit A
Settlement Agreement and Stipulated Administrative Civil Liability Order
City of Los Angeles, Bureau of Sanitation

- c. A WCCSD crew arrived at 1:32 p.m. and determined that a trap maintenance hole was backed up due to a partial blockage.
 - d. The WCCSD crew, working with the City of Culver City, managed to stop a majority of the flow by 2:35 p.m. by diverting the Mesmer Pumping Plant force main. At approximately 4:40 p.m., the crews established a downstream capture of overflow, which stopped sewage from reaching the storm drain system.
 - e. The SSO ceased completely at 5:35 p.m. when crews were able to establish bypass of the remaining flow to the maintenance hole.
 - f. The Discharger estimated the volume of the SSO at 322,545 gallons (rounded up in this Stipulation and Exhibits to 323,000 gallons).
 - g. A large volume of the SSO soaked into the surrounding soil or was contained in channels and drainage system
 - h. The Discharger utilized two on-call contractors to clean the storm drain system and remove contaminated soil in the vicinity of the SSO.
8. On June 30, 2011, the Discharger provided the following supplemental information regarding the SSO:
- a. Around 235,000 gallons of sewage were captured from the channels or drainage system.
 - b. An estimated 46,000 gallons of sewage soaked into the ground on the hillside or were captured by the City of Culver City.
 - c. Based on these volumes, an estimated 42,000 gallons of sewage from the SSO was unaccounted for and not cleaned up.
9. **VIOLATION:** The Discharger violated Prohibition C.1 of Order No. 2006-0003-DWQ, Section 301 of the Clean Water Act, and Water Code section 13376 from September 28, 2010 to September 29, 2010, by discharging 323,000 gallons of untreated sewage to a hillside, which then flowed to Centinela Channel Creek, Ballona Creek, and ultimately the Pacific Ocean, all waters of the State of California and waters of the United States. It is estimated that 42,000 gallons of the 323,000 gallons of untreated discharged sewage reached waters of the United States and were not cleaned up.
10. Pursuant to Water Code section 13350(a), any person or entity who, in violation of any Waste Discharge Requirements issued by the State Water Board, discharges waste, or causes or permits waste to be deposited where it is discharged, into waters of the state, is subject to administrative civil liability pursuant to Water Code section 13350(e) either (1) on a daily bases not to exceed five thousand dollars (\$5,000) for each day the violation occurs; or (2) on a per gallon basis in an amount not to exceed ten dollars (\$10) per gallon of waste discharged.

Exhibit A
Settlement Agreement and Stipulated Administrative Civil Liability Order
City of Los Angeles, Bureau of Sanitation

11. Pursuant to Water Code section 13385(a), any person who violates Water Code section 13376 or any requirements of Section 301 of the Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385(c), in an amount not to exceed the sum of both the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
12. The Prosecution Staff has elected to pursue enforcement of the alleged violation pursuant to Water Code section 13385.

EXHIBIT B

CALCULATION OF LIABILITY FOR VIOLATIONS

Pursuant to Water Code section 13385, subdivision (e), the Los Angeles Water Board is required to consider the following factors in determining the amount of civil liability: the nature, circumstances, extent, and gravity of the violations; whether the discharge is susceptible to cleanup or abatement; the degree of toxicity of the discharge; and with respect to the violator, the ability to pay; the effect on the ability to continue in business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters that justice may require. Water Code section 13385, subdivision (e) requires that, at a minimum, the liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation.

The State Board's Water Quality Enforcement Policy (amended November, 2009)¹ established a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in Water Code section 13385, subdivision (e). The liability methodology spreadsheet presents the administrative civil liability derived from the use of the Enforcement Policy methodology. It is attached hereto as Exhibit C and is incorporated herein by this reference. An analysis of the methodology for the violation alleged in Exhibit A is set forth in detail below:

1. Step 1 – Potential for Harm for Discharge Violations

a. Factor 1: Harm or Potential for Harm to Beneficial Uses (2)

This score evaluates direct or indirect harm or potential for harm from the violation.

Spill Path – Affected Water bodies

From the discharge location, raw sewage flowed down an undeveloped hillside into a storm drain where it flowed through a closed drainage system before reaching the open Centinela Creek Channel. From the point of entry, Centinela Creek flows for approximately two miles before discharging into Ballona Creek. Ballona Creek subsequently runs for approximately two to three miles before discharging into the Pacific Ocean.

Beneficial Uses

Ballona Creek flows as an open channel for just under 10 miles from Los Angeles (South of Hancock Park) through Culver City, reaching the Pacific Ocean at Playa del Rey. The creek meets Ballona estuary, at Centinela Avenue, where concrete is replaced by grouted riprap side slopes and an earthen bottom. Ballona estuary flows into the Santa Monica Bay, and its water quality affects the adjacent shoreline of Dockweiler Beach.

¹ The Enforcement Policy may be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/policy.shtml

Exhibit B
Settlement Agreement and Stipulated Administrative Civil Liability Order
City of Los Angeles, Bureau of Sanitation

Centinela Creek discharges into Ballona Creek within the Ballona estuary. The existing beneficial uses of Ballona Creek Estuary from the *Basin Plan* include:

1. Navigation (NAV)
2. Water Contact Recreation (REC1)
3. Non-contact Water Recreation (REC2)
4. Commercial and Sport Fishing (COMM)
5. Estuarine Habitat (EST)
6. Marine Habitat (MAR)
7. Wildlife Habitat (WILD)
8. Rare, Threatened, or Endangered Species (RARE)
9. Migration of Aquatic Organisms (MIGR)
10. Spawning, Reproduction, and/or Early Development (SPWN)
11. Shellfish Harvesting (SHELL)

Harm or Potential for Harm

The SSO occurred during dry weather conditions. However, according to the Discharger's response to Cleanup and Abatement Order No. R4-2010-0176, dated October 28, 2010, a majority of the sewage was contained within the storm drainage system.

Monitoring performed by the Discharger showed heightened indicator bacteria levels in Ballona Creek downstream of Centinela Creek on September 29, 2010, indicating that the spill likely impacted Ballona Creek Estuary. Heightened levels were not observed from the same sampling location on September 30, 2010 and October 1, 2010. There was no available monitoring data for September 28, 2010.

Dockweiler State Beach was closed from Wednesday, September 29, 2010 through Thursday, September 30, 2010 as a precaution. The Discharger reported that indicator bacteria monitoring from September 28 through October 1, 2010 at the beach did not rise above AB411 water quality single sample standards.

Altogether, the discharge resulted in un-quantified harm to the beneficial uses of waters. A score of **2 out of 5** was assigned to Factor 1 of the methodology – less than moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor).

b. Factor 2: Physical Chemical, Biological or Thermal Characteristics of the Discharge (3)

Raw sewage contains microbial pathogens known to be harmful public health including, but not limited to, the following:

- Bacteria: campylobacter, E. coli, vibrio cholera, salmonella, S.typhi, shigella, yersinia
- Parasites: cryptosporidium, entamoeba, giardia
- Viruses: adenovirus, astrovirus, noravirus, echovirus, enterovirus, reovirus, rotavirus

Exhibit B

Settlement Agreement and Stipulated Administrative Civil Liability Order
City of Los Angeles, Bureau of Sanitation

Raw sewage can cause illness including abdominal cramps, vomiting, diarrhea, high fever, and dehydration. Additionally, it can cause disease such as gastroenteritis, salmonellosis, typhoid fever, pneumonia, shigellosis, cholera, bronchitis, hepatitis, aseptic meningitis, cryptosporidium, amoebic dysentery, giardiasis, and even death.

Raw sewage can also cause environmental impacts such as a loss of recreation and can be detrimental to aquatic life support, can result in organic enrichment, and can also result in exposure to floatable inorganic objects (e.g. condoms, tampons, medical items (syringes)).

A score of **3 out of 4** was assigned to Factor 2 of the methodology – discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e. the chemical and/or physical characteristics of the discharged material exceed known risk factors and/or there is substantial concern regarding receptor protection).

c. Factor 3: Susceptibility to Cleanup and Abatement (0)

More than 50 percent of the discharge was susceptible to cleanup or abatement.

Accordingly, a score of **0 out of 1** was assigned to Factor 3 of the methodology.

Based on the above determinations, the **Potential for Harm final score** for the violations is **6**.

(Factor 1) + (Factor 2) + (Factor 3)

= 2 + 3 + 0

= 5 *Potential for Harm*

2. Step 2 – Assessment for Discharge Violations

Water Code section 13385, subdivision (c) states that civil liability may be imposed administratively by a Los Angeles Water Board pursuant to Article 2.5 of Chapter 5 in an amount not to exceed the sum of ten thousand dollars (\$10,000) for each day in which the violation occurs and \$10 for each gallon discharged but not cleaned up that exceeds 1,000 gallons.

Per Gallon Assessment

To calculate the initial liability amount on a per gallon basis, a **Per Gallon Factor** is determined from Table 1 of the Enforcement Policy (page 14) by using the **Potential for Harm score** (step 1) and the extent of **Deviation from Requirement** (minor, moderate, or major) of the violation. The Per Gallon Factor is then multiplied by the number of gallons subject to administrative civil liability multiplied by the maximum per gallon liability amount.

a. Deviation from Requirement (Major)

Section 301 of the Clean Water Act (33 U.S.C. §1311) and Water Code Section 13376 prohibit the discharge of pollutants to surface water except in compliance with a National

Exhibit B
Settlement Agreement and Stipulated Administrative Civil Liability Order
City of Los Angeles, Bureau of Sanitation

Pollutant Discharge Elimination System (NPDES) permit. State Water Board Order No. 2006-0003-DWQ is not an NPDES permit.

The September 28-29, 2010 discharge of raw sewage is a direct and absolute deviation from the requirements of Section 301 of the Clean Water Act and Water Code section 13376. Therefore, the Deviation from Requirement is **"Major."**

b. Per Gallon Factor (0.15)

Using a Potential for Harm score of "5" and a "Major" Deviation from Requirement, a Per Gallon Factor of 0.15 is selected from Table 1 of the Enforcement Policy.

Using the information above, the **Initial Liability assessed per gallon is calculated to be \$61,500.**

$$\begin{aligned} & (\text{Per Gallon Factor}) \times (\text{Gallons subject to liability}) \times (\text{Maximum per gallon liability amount}) \\ & = (0.15) \times (41,000 \text{ gallons}) \times (\$10.00 / \text{gallon}) = \mathbf{\$61,500} \end{aligned}$$

Per Day Assessment

To calculate the initial liability amount on a per day basis, a **Per Day Factor** is determined from Table 2 of the Enforcement Policy (page 15) by using the **Potential for Harm score** (step 1) and the extent of **Deviation from Requirements** (minor, moderate, or major) of the violation.

a. Deviation from Requirement (Major)

The deviation from requirement is **Major**.

b. Per Day Factor (0.15)

A Per Day Factor of 0.15 is selected from Table 2 of the Enforcement Policy.

Using the information above, the **Initial Liability assessed per day is calculated to be \$3,000:**

$$\begin{aligned} & (\text{Per Day Factor}) \times (\text{Days subject to liability}) \times (\text{Maximum per day liability amount}) \\ & = (0.15) \times (2 \text{ days}) \times (\$10,000 / \text{day}) = \mathbf{\$3,000} \end{aligned}$$

3. **Step 3 – Per Day Assessments for Non-Discharge Violations**

Not applicable

4. **Step 4 – Adjustment Factors**

Staff considered certain Conduct Factors to calculate adjustments to the amount of the Initial Amount of the Administrative Civil Liability as follows:

Exhibit B
Settlement Agreement and Stipulated Administrative Civil Liability Order
City of Los Angeles, Bureau of Sanitation

a. Culpability (1.1)

The structure that caused the overflow was installed by the Discharger as part of the Lower North Outfall Sewer Rehabilitation Project and is located within Discharger's city boundaries. However, this location was not included in the Discharger's maintenance management system. The structure was located in an area where jurisdictional boundaries were not clearly defined. Based on a map provided by the Discharger, the spill occurred approximately 300 feet from the border with Culver City.

If the issue of jurisdiction had been defined prior to the SSO, and the location was correctly managed and maintained, the overflow may not have been as serious or may not have occurred altogether. The Discharger states in their Response to CAO R4-2010-0176, dated October 28, 2010, "[t]here are no maintenance records for the actual structure that caused the overflow on September 28-29, 2010."

To adjust for the Discharger's degree of culpability regarding the violation, the Enforcement Policy suggests a multiplier ranging from 0.5 to 1.5, with a lower multiplier for accidental incidents and a higher multiplier for intentional or negligent behaviors. In this case, a multiplier of **1.1** was selected.

b. Cleanup and Cooperation (0.75)

The Discharger responded to the spill by diverting lines from the overflow location to cease the discharge. Cleanup of the storm drain system and other affected areas was initiated upon cessation of the overflow. The Discharger's staff was cooperative in assisting Los Angeles Water Board staff during the investigation of the spill. In addition, the Discharger was timely and complete in their response to CAO R4-2010-0176.

Due to the spill, the Discharger removed the trap maintenance hole from service and rerouted the Culver City Mesmer Pump force main and the City of Los Angeles local sewer to the North Outfall Sewer. The cost of the project is estimated to be \$200,000. The Discharger states that it is working with the City of Culver City to develop contingency plans for future incidents and to identify maintenance responsibilities where jurisdictional boundaries are not clearly defined.

To adjust for the extent that the Discharger voluntarily cooperated in returning to compliance and correcting environmental damage, the Enforcement Policy suggests a multiplier ranging from 0.75 to 1.5, with a lower multiplier where there is a high degree of cleanup and cooperation, and higher multiplier where this is absent. In this case, a multiplier of **0.75** was chosen.

c. History of Violations (1.1)

The Discharger has a history of SSOs from its collection system. However, it should be noted that the collection system serves a population of approximately 3.5 million people. The system contains approximately 24 miles of force main, 6,117 miles of gravity sewer, and 1,065 miles of laterals. The number of SSOs reported on CIWQS has decreased annually.

Exhibit B
Settlement Agreement and Stipulated Administrative Civil Liability Order
City of Los Angeles, Bureau of Sanitation

To adjust for dischargers with a history of repeat violations, the Enforcement Policy suggests a minimum multiplier of 1.1. Therefore, a multiplier of **1.1** was chosen.

The initial base liability per gallon and initial base liability per day are multiplied by the above factors to determine **Revised Liability amounts of \$55,811.25 and \$2,722.50.**

Revised Per Gallon Assessment

$$\begin{aligned} & (\text{Initial Liability}) \times (\text{Culpability}) \times (\text{Cleanup and Cooperation}) \times (\text{History of Violations}) \\ & = (\$61,500) \times (1.1) \times (0.75) \times (1.1) = \mathbf{\$55,811.25} \end{aligned}$$

Revised Per Day Assessment

$$\begin{aligned} & (\text{Initial Liability}) \times (\text{Culpability}) \times (\text{Cleanup and Cooperation}) \times (\text{History of Violations}) \\ & = (\$3,000) \times (1.1) \times (0.75) \times (1.1) = \mathbf{\$2,722.50} \end{aligned}$$

5. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by adding the revised liability amounts per gallon and per day. The **Total Base Liability is \$58,533.75**

$$\begin{aligned} & (\text{Revised Liability Per Gallon Assessment}) + (\text{Revised Liability Per Day Assessment}) \\ & \$55,811.25 + \$2,722.50 = \mathbf{\$58,533.75} \end{aligned}$$

6. Step 6 – Ability to Pay and Ability to Continue in Business

If there is sufficient financial information to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business.

According to the Fiscal Year 2012-2013 Budget, the Bureau of Sanitation had an adopted Fiscal Year 2011-12 budget of \$221,352,636, with estimated expenditures of \$207,227,000. Of this budget, \$109,967,510 is from the Sewer Operation & Maintenance Fund.

The Bureau of Sanitation charges its users a Sewer Service Charge (SSC), which generates funds for constructing and maintaining wastewater facilities such as sewers and sewage treatment plants, and for treating the sewage that is discharged into the sewer system. As of November 6, 2012, the SSC rate is \$3.57 per 748 gallons.

The Discharger's budget, the Prosecution Staff maintains that the Total Base Liability Amount will not affect the Discharger's ability to continue in business. Accordingly, the Total Base Liability Amount was not adjusted.

7. Step 7 – Other Factors as Justice May Require

Exhibit B
Settlement Agreement and Stipulated Administrative Civil Liability Order
City of Los Angeles, Bureau of Sanitation

If the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this. Staff believes that the adjusted Total Base Liability Amount determined using the above factors is appropriate.

Staff costs incurred by the Los Angeles Water Board to date are \$6,000. This amount was added to the Total Base Liability Amount.

$$\begin{aligned} & (\text{Total Base Liability}) + (\text{Staff Costs}) \\ & = \$58,533.75 + \$6,000.00 = \$64,533.75 \end{aligned}$$

8. Step 8 – Economic Benefit

The Economic Benefit Amount is any savings or monetary gain derived from the act or omission that constitutes the violation. The Enforcement Policy states that the adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

The primary economic benefit for the Discharger was the avoided costs of routine, quarterly maintenance of the SSO location. Using EPA's BEN model (with a noncompliance date of January 1, 2008, and a compliance date of October 1, 2010), The **Economic Benefit Amount was estimated to be \$1,499 (rounded up to \$1,500)**. The \$44,931.75 Total Base Liability Amount exceeds \$1,650—the Economic Benefit Amount plus 10 percent that the Discharger received.

9. Step 9 – Maximum and Minimum Liability Amounts

The **Minimum Liability Amount is \$1,650**. As mentioned in Step 8, the Enforcement Policy states that when making monetary assessments, the adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount. Further, Water Code section 13385, subdivision (e) requires the Los Angeles Water Board to recover any economic benefit or savings received by the violator.

The **Maximum Liability Amount is \$430,000**. The maximum administrative civil liability that may be assessed pursuant to Water Code section 13385, subdivision (c) is the sum of ten thousand dollars (\$10,000) for each day in which the violation occurs and \$10 for each gallon discharged but not cleaned up that exceeds 1,000 gallons.

$$\begin{aligned} & [(2 \text{ days}) \times (\$10,000 / \text{day})] + [(42,000 \text{ gallons} - 1,000 \text{ gallons}) \times (\$10 / \text{gallon})] \\ & = [(2 \text{ days}) \times (\$10,000 / \text{day})] + [(41,000 \text{ gallons}) \times (\$10 / \text{gallons})] \\ & = \$430,000 \end{aligned}$$

10. Step 10 – Final Liability Amount

The final liability amount as determined by the methodology is \$64,533.75.

